

**REMARKS**

The examiner objected to the independent claims containing the phrase "thereby precluding food from penetrating between surfaces of the plastic food container and the disk" on the ground that said phrase constituted "new matter". In response to the examiner's rejection, it is argued that this phrase is not "new matter" and is supported in the Description and that therefore claims 13, 14, 16, 21-24, 32, 34, 35, 37-40 should be allowed.

In addition, new claims 41, 42 and 43 have been added and these claims track claims 13, 21 and 32 except that the objectionable language has been removed. Accordingly, it is also argued below that claims 41-43 should be allowed.

**New Matter Rejection**

The Description portion of the Specification does state explicitly or implicitly that when the side of the disk rests snugly against the lower portion of the container wall food is precluded from penetrating between surfaces of the (plastic food) container and the disk. Although this information does not exist in one place, it does appear in the Description as a combination of statements made in various paragraphs together with the drawings.

For example, page 2 lines 19-22 and page 3 line 18 through page 4 line 1 of the Description teaches the idea of avoiding a food cooling and storage system wherein the freezer insert is not smooth and therefore food stains that are hard to remove accumulate thereon because (i) it is unsanitary and (ii) involves difficult cleaning work. In describing food stain accumulation in the system wherein the insert is not smooth, the food stain accumulation is not limited to any particular surface of the insert but rather food stains on the insert in general. Thus the Description teaches use of a food cooling system with a smooth insert to avoid food stains also on the sides of the insert.

Furthermore, page 6 lines 1-3 of the Description teaches that the system of the present invention is designed specifically to avoid a food cooling and storage system wherein food stains accumulate by making using of an insert having smooth surfaces. In this regard, the drawings, in FIGS. 2 and 3, show clearly that the surface of the side of the disk insert is smooth and hence snugly conforms to the lower portion of the container wall of the plastic food container. Moreover, page 10 lines 8-10 of the Description states explicitly that the side of the disk conforms to a shape of the lower portion of the container wall of the plastic food container under the teachings of the present invention, which as understood from the above portions of the Specification, is designed to overcome the disadvantages of the prior art and have the advantage of smooth surfaces thus preventing hard to remove and unsanitary food stains from accumulating.

From the combination of the above, it is clear that the patent application originally disclosed, albeit not succinctly in one place, teaches the idea that when the side of the disk rests snugly against the lower portion of the container wall food is precluded from penetrating between surfaces of the (plastic food) container and the disk.

Consequently, it is respectfully submitted that the examiner's rejection of claims 13-16, 21-24, 32, 34, 35, 37-40 is not justified when the Specification is closely examined and this rejection should be withdrawn and these claims allowed.

The New Claims Without the Objectionable Language are Allowable over the Prior Art

In addition, new independent claims 41, 42 and 43 have been submitted wherein the functional language "thereby precluding food from penetrating between surfaces of the plastic food container and the disk" has been deleted and wherein these claims are otherwise identical to independent claims 13, 21, 32. Claims 41-43 thus avoids the only rejection ("new matter")

rejection) that the examiner had for independent claims 13, 21, 32 since the objectionable language has been deleted from these claims. However, those words were functional and the structure of the invention as defined by these claims remains the same as in claims 13, 21, 32. Based on my conversation with the examiner, it is necessary for Applicant to reproduce, and Applicant does reproduce below, the explanation of the novelty and nonobviousness of claims 41-43 over the prior art. Such argument was previously provided in the context of independent claims 13, 21 and 32 for the RCE Amendment.

It is noted generally that none of the references cited by the examiner teach or suggest the invention as claimed in independent claims "41", "42" and "43". None of them teach or suggest an easily removable thermal preservation insert disk combined with a plastic food container where the disk conforms exactly to the bottom and side walls of the plastic food container, thereby preventing food from penetrating between the surfaces, which penetration would inter alia (i) make cleaning of the disk difficult, (ii) use up space and hence decrease the space-saving advantages of the disk and (iii) and reduce the thermal preservation effect of the disk, especially if food under the disk tilted the disk.

For example, Peterson, cited by the examiner, not only has grooves 19 recessed into the interior surface 13 but also has a space for the lid to be grasped, as best appreciated in FIG. 1 of Peterson, U.S. Patent No. 4,577,474. In addition, in Simko, 4,197,890, the outer wall of the container is flexible so the disc-like ice pack unit 70 will not be able to conform exactly to the container's outer wall. The other references cited by the examiner also do not teach an easily removable thermal preservation insert disk combined with a plastic food container where the disk conforms exactly to the bottom and side walls of the plastic food container, thereby preventing food from penetrating between the surfaces.. For example, several of the prior art

cited by the examiner (e.g. Gordon, McGraw, Telkes, etc.) do not teach or suggest a disk that is removable easily. In other prior art cited by the examiner (e.g. Heverly, etc.) the insert disk does not conform exactly to the bottom and the wall of the plastic food container.

Furthermore, in numerous other patent references cited by the examiner (e.g. Conklin (lid), Bair (shelf), etc.), the disk insert is not even located on the bottom of the plastic food container. In Conklin, for example, it is located not on the bottom of the container but in the lid, in Bair it is located on the shelf not on the bottom of the container.

Thus none of the references cited by the examiner alone or in combination teach an easily removable thermal preservation insert disk combined with a plastic food container where the disk conforms exactly to the bottom and side walls of the plastic food container. Thus none of the prior art has the advantages that the present invention has, including preventing food from penetrating between the surfaces, which penetration would inter alia (i) make cleaning of the disk difficult, (ii) use up space and hence decrease the space-saving advantages of the disk and (iii) and reduce the thermal preservation effect of the disk, especially if food under the disk tilted the disk.

Claims 38-40 are dependent on claims 13-15 and simply recite that the "thermal preservation fluid is inaccessible". This is an additional feature that distinguishes the insert in the combination of the present invention from prior art references cited by the examiner in which the insert could be opened and the fluid removed.

Since all of the foregoing amendments are understood to place the application in condition for allowance, their entry is submitted to be appropriate and is respectfully requested. Accordingly, it is respectfully requested that claims 13, 14, 16, 21-24, 32, 34, 35 and 37-43 are distinguishable over the prior art and should be allowed.

The examiner also objected to the drawings on the ground that claim 15 recites the insert being in direct with food, which is not explicitly shown in the drawings. In response, Applicant is canceling claim 15 to avoid this objection.

A check for \$300 accompanies this Amendment covering three new independent claims.

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Respectfully submitted,



Steven Horowitz, Attorney for Applicant  
Registration No. 31,768  
295 Madison Avenue, Suite 700  
New York, NY 10017  
(212) 867-6800